

THE HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN
AND
THE HON'BLE DR JUSTICE SHAMEEM AKTHER

Writ Appeal No.465 of 2017

JUDGMENT: (Per the Hon'ble the Acting Chief Justice Ramesh Ranganathan)

This appeal, under Clause 15 of the Letters Patent, is preferred against the order passed by the Learned Single Judge in W.P.M.P.No.45950 of 2016 in W.P.No.37286 of 2016 dated 20.03.2017. The appellant herein, the 2nd respondent in the writ petition, was granted a lease in January 2016 pursuant to an auction held in the year 2012.

The 1st respondent-writ petitioner, along with certain others, had earlier filed W.P.No.8654 of 2012 which was dismissed holding that they were not entitled to continue in the subject premises, as they had been in possession for a period in excess of 25 years. They filed yet another writ petition in W.P.No.36309 of 2015 and, by order dated 12.11.2015, the Learned Single Judge, while making it clear that the question as to whether some of the petitioners who had not completed 25 years could file a review petition under Rule 12(4) of the Receipt and Expenditure Rules, 1968 could not be permitted to be raised in the writ petition before him as this plea has not been raised in the previous writ petition, however observed that the writ petitioners therein were free to approach the respondent with a representation in this regard.

The Learned Single Judge made it clear that the petitioners therein were not entitled to retain possession on this plea; and, in the event, the highest bids offered in the open auction were less than the leases being paid by the petitioners therein at present, the

respondent should consider the request of the petitioners therein for grant of further lease in terms of the directions in the order.

The present W.P.M.P was filed seeking a direction from this Court to the 2nd respondent herein to immediately consider the 1st respondent-writ petitioner's representation dated 17.10.2016 for re-allotment of Shop No.B3. This is also the main relief sought for in the writ petition. The main purpose of passing an interim order is to evolve a workable formula or a workable arrangement to the extent called for by the demands of the situation, only in order that no irreparable injury is occasioned. The Court has to strike a delicate balance after considering the pros and cons of the matter to ensure that larger public interest is not jeopardized thereby. **(Siliguri Municipality v. Amalendu Das¹)**. Interim orders, which practically give the principal relief sought in the writ petition, only for the reason that a prima-facie case has been made out, without considering the balance of convenience, the public interest and other considerations, should not be passed. **(Asstt. CCE v. Dunlop India Ltd.²; State of Rajasthan v. Swaika Properties³; Bank of Maharashtra v. Race Shipping & Transport Co. (P) Ltd.,⁴)**.

The interim order, under appeal, has the effect of granting the main relief sought for in the Writ Petition, that too at the admission stage even without giving the appellants an opportunity to file their counter-affidavit. Interim orders are, ordinarily, made to maintain the status quo so that the ultimate relief to be granted, to the party approaching the Court, may not become futile. **(Bihar**

¹ (1984) 2 SCC 436

² (1985) 1 SCC 260

³ (1985) 3 SCC 217

⁴ (1995) 3 SCC 257

Public Service Commission v. Shiv Jatan Thakur (Dr)⁵). Interim relief is granted during the pendency of proceeding so that, while granting final relief, the court is not faced with a situation of the relief having become infructuous or that, during the pendency of the proceeding, an unfair advantage has been taken by the party in default or against whom interim relief is sought. The object behind granting interim relief is to maintain the status quo so that the final relief can be appropriately moulded without the party's position being altered during the pendency of the proceedings. (**Cotton Corporation of India v. United Industrial Bank Ltd.**⁶). It is settled legal position that, by way of interim relief, the final relief should not be granted till the matter is decided one way or the other (**Mehul Mahendra Thakkar v. Meena Mehul Thakkar**⁷; **All India Anna Dravida Munnetra Kazhagam v. Govt. of T.N.**,⁸), as interlocutory orders are made in aid of final orders and not vice versa. (**Shipping Corporation of India Ltd. v. Machado Brothers**⁹; **Kavita Trehan v. Balsara Hygiene Products Ltd**¹⁰; and **Pitta Naveen Kumar v. Raja Narasaiah Zangiti**¹¹). An interim order should not be of such a nature as to result in the writ petition being finally allowed at an interim stage nor should relief be granted, at the interlocutory stage, by which the final relief, which is asked for and is available at the disposal of the matter, is granted. (**UPSC v. S. Krishna Chaitanya**¹²). Further such an order, which had the effect of allowing the writ petition itself, could not have been passed without the respondents being

⁵ 1994 Supp (3) SCC 220

⁶ AIR 1983 SC 1272

⁷ (2009) 14 SCC 48

⁸ (2009) 5 SCC 452

⁹ (2004) 11 SCC 168

¹⁰ (1994) 5 SCC 380

¹¹ (2006) 10 SCC 261

¹² (2011) 14 SCC 227 : (2012) 4 SCC (Civ) 935 : (2012) 2 SCC (L&S) 890

given an opportunity of filing their counter affidavits and without their being heard in the matter. We consider it appropriate, therefore, to set aside the order under appeal, and restore the W.P.M.P to file. The appellant-2nd respondent shall file his counter affidavit within two weeks from today. It is open to the 1st respondent-writ petitioner to request the Learned Single Judge to take up the W.P.M.P. any time after two weeks.

The Writ Appeal is disposed of accordingly. Miscellaneous Petitions pending, if any, shall also stand disposed of. There shall be no order as to costs.

(RAMESH RANGANATHAN, ACJ)

(DR. SHAMEEM AKTHER, J)

13th April, 2017
JSU



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